(1)

Supreme Court, U.S.
FILED

96 258 JUL 24 1996

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No.

In the

SUPREME COURT OF THE UNITED STATES

October Term 1996

LAVOYD WAYNE HARDIN

Petitioner

V.

JAMES CUNNINGHAM

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Lavoyd Wayne Hardin

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24 pp

QUESTIONS
PRESENTED FOR REVIEW

1. Why did the bankruptcy Judges, John Flowers, Michael McConnell, Massie Tillman, United States District Judge Eldon B. Mahon, and the Fifth Circuit Court Judges abuse their discretion and ignore and defy and challenge the supreme laws of the land and authorities? Article VI, Paragraph (2), Amendment 6, Amendment l4, Section 1 of the United States Constitution; Section 1303, Section 1307, Subsection (e), Section 1322 (b) (5) and (b) (8) Section 1323, and Senate Judiciary Report No. 95-989 of Title 11 United States Bankruptcy Code.

2. Why did all of the above judges add $30,000.00 plus to the petitioner's (Lavoyd W. Hardin) debt of $23,000.00 if it was not the purpose of enrichment? If Mr. Hardin had that kind of money, he would not have taken a chapter XIII bankruptcy.

3. Why did Bankruptcy Judge John Flowers disobey Title 11 United States Bankruptcy Code, Section 1307 Subsection (e) and convert a chapter 13 Case

to Chapter 7 when section 1307 subsection (e) strictly forbids conversion if the debtor is a farmer? And the debtor (petitioner) Mr. Hardin is a farmer, and Mr. Hardin did not request conversion (see page 35, line 7, Transcript dated Jun 16, 1982, case No. 480-00513, and Judge John Flowers said out of his own mouth and admitted the petitioner (Mr. Hardin) was a farmer and this 154 acres was afarm. See page 63, lines 2 - 18, Transcript dated September 22, 1982, Case No. 480-00513.

4. Why did Judge John Flowers be guided by a case way back in 1938 instead of the Bankruptcy Law 1307, subsection (e)? See page 63, lines 19 - 25, Transcript dated September 22, 1982, Case No. 480-00513.

5. Why did United States District Judge Eldon B. Mahon rule that farming is not a business? See page 20, lines 10 - 16, Transcript filed 5th day of January, 1984, Civil Action No. 4-82-595-E and 82-597. Also see Texas Vernon's Annotated Civil Statutes Title 5, Section 41,001, Note 114, Intent, Business Homestead Nature and Acquisition.

6. Why did Petitioner Attorney St. Clair Newbern, III, lie about the law on the argument that was made on one homestead? See page 20, lines 24 - 25, and page 21, lines 1 - 8, Transcript filed 5th day of January, 1984, Civil Action No. 4-82-595-E and 82-597. Also see the Texas Business Homestead Law in the Library of Congress under Catalogue Card Number 75-18201 ISBN 0-87201-824-5.

7. Why did Bankruptcy Judge Michael A. McConnell deny the petitioners Lavoyd W. Hardin and J. A. Hardin their constitutional rights to have the benefit of counsel? See 6th Amendment United States Constitution. See pages 4,5,6, 25 and 26, Adversary Case No. 483-0490. Transcript dated March 9th, 1984.

8. Why did United States District Judge Eldon B. Mahon cancel all his trials the same afternoon of March 9th, 1984, knowing that the Petitioner Lavoyd W. Hardin and J. A. Hardin did not have the benfit of counsel? Think about it. It looks mighty suspicious!

9. Why did United States District Judge Eldon B. Mahon use duress by threatening J. A. Hardin with

putting him in jail if he did not sign the deed over to Clifford F. McMaster, trustee? See Page 10. Why did Judge Mahon refuse to take full tender payment from J. A. Hardin (page 16) and why did attorney Mr. Colvin lie about full tender payment (page l6)? See Bankruptcy Law, Section 1322 (b)(8) and why did Judge Mahon misinterpret the bankruptcy law Section 1323 and Senate Judiciary Report #95-989. All this is in Transcript dated March 9, l984, Case No. 4-84-4-E. See Section 87-90, 14 Tex Jur 3d L. M. Wiley & Co. V. Prince (1858) 21 Tex 637 Bank of Fredericksburg V. Wendel (1928, CA) 11 SW2d 34l, writ dism.

10. Why did Bankruptcy Judge Michael A. McConnell let the trustee Clifford F. McMaster get away with committing perjury? See page 19, lines 24 - 25 and page 20 of the Transcript, dated May 25, l984, Adversary Case No. 484-4141, when Clifford F. McMaster, the trustee, admitted it in Transcript dated June 28, l985, pages 13 and 14. Case No. 480-00513.

11. Why did the Petitioner Lavoyd W. Hardin's attorney St. Clair Newbern betray him and not file a plan? See page 9, Transcript dated April 23, l985,

Case No. 480-00513.

12. Is it fair for the Courts to steal an old man's farm because they do not know the Chapter 13 Laws, and how to try a Chapter 13 case? Because Petitioner Lavoyd W. Hardin's Chapter 13 Case was among the first to be tried. See page 11, Transcript dated April 23, 1985, Case 480-00513.

13. Is it right for the Lawyers and Judges to carry this Case on for 20 years for the purpose of enrichment? See page 6, Transcript dated July 7, 1986, Case 480-4071.

14. Why did all of the above Judges descriminate again Petitioner Lavoyd W. Hardin and take away his Homestead Status just because Mr. Hardin was too poor to build a house on his farm? See page 17, Transcript dated June 28, 1985, Case 480-00513.

15. Why would Bankruptcy Judge Michael A. McConnell, United States District Judge Eldon B. Mahon, Trustee Clifford F. McMaster, and Petitioner Lavoyd W. Hardin's ex-wife (his one and only creditor) not accept full tender payment although Petitioner Lavoyd W. Hardin offered it many times? See page 18,

Transcript dated June 28, 1985, Case 480-00513.

16. Why did Bankruptcy Judge Michael A. McConnell let Trustee Clifford F. McMaster get away with committing perjury again? See pages 23 - 24 and page 37, lines 15 - 25, Transcript dated June 13, 1986, Case 480-4071.

17. Could Bankruptcy Judge Massie Tillman be prejudiced? He gave Mr. James Cunningham all the time he wanted to state his case, but gave the petitioner Lavoyd W. Hardin, two and a half minutes to respond See page 4, lines 15 - 17, page 5, lines 2 - 5, Transcript dated February 6, 1995, Case 480-40513-MT-7. Also see Canon 3A (3) and (4) of the Judicial Conduct Code.

18. Why did Roy Hufstutler accept a forged deed? Texas Article 5509 Vernon's Annotated Civil Statues.

19 Why did Roy Hufstutler have the audacity to think he could get away with stealing the Petitioner Mr. Lavoyd W. Hardin's irrigation pipe, peanut digger, John Deere breaking plow, planter, cultivator, tiller and no telling what else?

20. Why did H. G. Higginbottom accept a forged deed? See Texas Article 5509 Vernon's Annotated Civil Statutes.

INTERESTED PARTIES

1. Lavoyd Wayne Hardin
2. James Cunningham
3. Roy Hufstutler
4. H. G. Higginbottom

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JURISDICTION

According to Article III, Section 2.(1) of the United States Constitution, this Supreme Court of the United States has jurisdiction which shall extend to all cases, in law and equity, arising under this constiution, the Laws of the United States and treaties made, or which shall be made, under their authority.

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

Article VI, Paragraph (2) which makes it very clear that this United States Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby.

Amendment 6 guarantees every American the right to have the assistance of counsel for his defense. Amendment 5 guarantees every American that the courts will not deprive them of life, liberty or property,

without due process of law. Amentment 14, Section 1, guarantees every American the equal protection of the laws.

STATEMENT AND FACTS OF THE CASE

This case started 20 years ago over a divorce. Although the Petitioner Mr. Lavoyd Wayne Hardin did not have any money, he did have a farm worth a great deal of money and it is the policy of the lawyers and judges in Comanche County, 220th District of Texas to manipulate and steal anything of value, so they forced Mr. Hardin to sign, under duress, a Promissory Note and Deed of Trust. When a drought hit Texas and Mr. Hardin did not make a very good crop, and could not make the full payment on the illegal Promissory Note, the lawyers and judges moved in to steal Mr. Hardin's farm. That is when Mr. Hardin went to Fort Worth and took a Chapter 13 Bankruptcy to save his farm, and have the opportunity for a second chance. The facts of the record will show that Mr. Hardin left one den of thieves in Comanche County, Texas, and went to Fort Worth, Texas, and encountered another den of thieves

ten times worse.

The facts of this case will show that in October, 1980, Mr. Hardin went to the United States Federal Bankruptcy Court in Fort Worth, Texas and filed a Chapter 13 Bankruptcy Petition according to 1322 (b) (5) Bankruptcy Law, which reads as follows:

> "Provides for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim on which the last payment is due after the date on which the final payment under the plan is due;"

Section 1303 of the United States Title 11 Bankruptcy Code gives Mr. Hardin, the debtor at that time, now the petitioner, the rights and power to use, lease or sell his farm.

Section 1307, subsection (e) of Title 11 United State Bankruptcy Code prohibits and forbids the court to convert a case under Chapter 13 to a case under Chapter 7 or 11 if the debtor is a farmer, unless the farmer requests such conversion. Now the farmer, Mr. Hardin, and the debtor, Mr. Hardin, did not request such conversion.

Section 1323 of Title 11 United States Bankruptcy Code and the Senate Judiciary Report No. 95-989 permits the debtor, Mr. Hardin, now the petitioner, to sell his farm without court approval so long as Mr. Hardin complies with the requirements of Section 1322. Mr. Hardin complied with 1322 (b) (8) and tried to pay all the debt, and put an end to this nonsense once and for all, but the courts, the judges and the trustees would not accept it. By law they have no choice, but to accept it.

The Texas laws on the exemption from forced sale of the rural and urban homesteads reads as follows:

Article XVI, Section 49, Exemptions From Forced Sales - The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female. This article is found in the Texas Constitution.

Article XVI, Section 50 of the Texas Constitution, Homestead Exemptions; The homestead of a family or of a single adult person, shall be, and is hereby

protected from forced sale for the payment of all debts except for the purchase money thereof. No mortgage, trust deed or other lien on the homestead shall ever be valid, except for the purchase money thereof.

Article XVI, Section 51, of the Texas Constitution Homestead Defined. The homestead not in a town or city, shall consist of not more than two hundred acres of land. The homestead in town or city shall consist of a lot or lots, not to exceed in value of Ten Thousand Dollars, at the time of their designation as the homestead, provided that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family.

The Texas Law, Vernon's Annotated Civil Statutes, Title 5, Section 41,001, Note 114, reads as follows:

> "A business homestead can be established by the intention to appropriate the property as a place of business."

The Texas Homestead Exemption from forced sale laws makes it very, very clear that the Bankruptcy

Judge, the United States District Judge, and the Fifth Circuit Judges had no legal authority to steal Mr. Hardin's farm. So there will be no misunderstanding about the exemption from forced sale of the of the Texas Business Homestead, the Texas Law makes it very clear for the judges to understand and it reads as follows:

THE TEXAS BUSINESS HOMESTEAD LAW

The head of a house who has a profession or business can have a business homestead, which may be part of the residence or separate from it. The business homestead is likewise exempted from forced sale. The premises claimed as a business homestead must be reasonably suited to the transaction of the business or profession. Therefore, one may have a rural homestead where he and his wife and children live, and simultaneously have a business homestead in town. Conversely, he may have an urban homestead where he and his wife and children live and also have a rural business homestead. Along with the business homestead, the equipment and machines necessary for carrying on the business or profession of the head of the family are

exempt from forced sale. Moreover, the head of the house may carry on more than one profession or business in the business homestead, and the appurtenances of each would be exempt. The head of the house cannot have two different businesses or professions in two different places and claim both places as business homesteads.

These Texas Homestead Exemptions Laws are so important they have been filed and put on record in the Library of Congress, Washington, D. C., Catalog Card Number 75-18201 ISBN O-87201-824-5.

The above laws are still in power. Article XVI, Section 48 of the Texas Constitution reads as follows. "Laws to Remain in Force - All laws and parts of laws now in force in the State of Texas which are not repugnant to the Constitution of the United States or to this Constitution shall continue and remain in force as the laws of this State." None of these laws have expired or been repealed.

ARGUMENT

You may ask why would all the above judges dishonor the United States Constitution, dishonor their oath of office, and disgrace their integrity, by abusing their discretion, and ruling against every law the petitioner, Mr. Hardin has quoted, and all these laws were made in the pursuance of the United States Constitution. There are two reasons:

1. When the petitioner, Mr Hardin, lost a case in the Supreme Court of Texas, the judges told Mr. Hardin's attorney they ruled against Mr. Hardin because Mr. Hardin had represented himself in the 220th District Court in Comanche, Texas, so we, the Supreme Court of Texas are going to send a message to Mr. Hardin and the rest of America that you can not win in a court of law if you represent yourself. The judges said Mr. Hardin could start a trend and put all lawyers out of work.

2. The record will show and prove for the last 16 years, the Federal Courts in Fort Worth and New Orleans followed the lead of the Supreme Court of Texas to teach Mr. Hardin a lesson, and stole his farm.

OPINIONS

The opinion of the Fifth Circuit Court in New Orleans is at the back of this petition (page 12), and you can tell they did not have the decency to look at Mr. Hardin's excerpts of the record or the laws that were made in the pursuance of the United States Constitution. This petition will clearly show Mr. Hardin's opinion.

CONCLUSION

The record, this petition, and the excepts of the record on file in the Fifth Circuit Court of Appeals in New Orleans, Case No. 95-11176, will prove the Fort Worth Federal Judges have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's supervisory power, Rule l0 (a). By the constitutional law, for a contract or document to be binding and enforceable, it must fulfill four legal requirements: mutual assent or consent, competent parties, lawful consideration, and valid subject matter. A contract that meets these requirements and has been fully executed on both sides, the court has no jurisdiction over. In view of this constitutional

law, the judges cannot use duress to force a person to sign over his deed to his farm.

Because of the personal vendetta that the Fort Worth and New Orleans judges have against the petitioner, Mr. Hardin, Mr. Hardin has failed to reap the harvest of ten years of peanuts, ten years of oats, and ten years wheat, cattle and grain sorghum. Mr. Hardin prays that this honorable court will view this case and set the record straight, once and for all, and have Mr. Roy Hufstutler of Comanche, Texas, pay to Mr. Hardin $40,000.00 for ten years lease on Mr. Hardin's farm, and for the theft of farm equipment and have Mr. H. G. Higginbottom of Route 2, DeLeon, Texas, pay to Mr. Hardin $30,000.00 for ten years lease on his peanut land and the use of Mr. Hardin's four irrigation wells.

Mr. Lavoyd Wayne Hardin prays that this honorable court will give him relief. Mr. Hardin wants his farm back. The law says it belongs to Mr. Hardin.

Signed by: Lavoyd Wayne Hardin

Lavoyd Wayne Hardin, Pro-Se

PROOF OF SERVICE

I, Lavoyd Wayne Hardin, hereby certify that a copy of this Petition for Writ of Certiorari under the penalty of perjury was mailed by First Class Postage Prepaid, in DeLeon, Texas on this 24th day of July, 1996, addressed to: James W. Cunningham, 6412 Sondra Drive, Dallas, Texas 75214 - 3451, Phone no. (214) 827-9112.

Roy Hufstutler, 1001 North Houston Street, Comanche, Texas 76442, Phone no. (915) 356-3600.

H. G. Higginbottom, Route 2, DeLeon, Texas 76444, Phone no. (817) 893-2165.

Signed this 24th day of July, 1996.

By: Lavoyd Wayne Hardin

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-11176

In The Matter Of : LAVOYD WAYNE HARDIN
Debtor

LAVOYD WAYNE HARDIN
Appellant

v.

JAMES CUNNINGHAM
Appellee

U.S. COURT OF APPEA
FILED
APR 26 1996
CHARLES R. FULBRUGE III
CLERK

Appeal from the United States District Court for the
Northern District of Texas, Fort Worth

Before JOLLY, JONES, and STEWARD, Circuit Judges
BY THE COURT:

IT IS ORDERED that the motion of appellee to dismiss the appeal is GRANTED

MOT-21

BEST AVAILA

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 95-11176

U.S. COURT OF APPEALS
FILED
APR 25 1996
CHARLES R. FULBRUGE III
CLERK

In The Matter Of: LAVOYD WAYNE HARDIN

Debtor

LAVOYD WAYNE HARDIN

Appellant

v.

JAMES CUNNINGHAM

Appellee

Appeal from the United States District Court for the
Northern District of Texas, Fort Worth

Before JOLLY, JONES and STEWART, Circuit Judges.

BY THE COURT:

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MOT-21

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96 258 JUL 24 1996

OFFICE OF THE CLERK

No.

In the

SUPREME COURT OF THE UNITED STATES

October Term 1996

LAVOYD WAYNE HARDIN

Petitioner

V.

JAMES CUNNINGHAM

Respondent

SUPPLEMENTARY APPENDIX

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4 pp.

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV 15 1996
NANCY DOHERTY, CLERK
By Betty Brown
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

LAVOYD WAYNE HARDIN

VS. 4:95-CV-250-E

JAMES CUNNINGHAM

ORDER

Appellant Lavoyd Wayne Hardin has moved for relief from the Court's order of October 26, 1995, dismissing Hardin's appeal for lack of prosecution. The dismissal was based on Hardin's failure to file a statement of issues within fifteen days of filing the notice of appeal, as required by Bankruptcy Rule 8006. Indeed, although Hardin filed his notice of appeal on February 14, 1995,

and was put on notice of his failure to file the statement of issues by appellee's motion to dismiss, filed on May 2, 1995, Hardin has not filed the statement to date. Nor has Hardin filed his appeal brief which was due on April 26, 1995.

In support of his motion for relief under Rule 60, Hardin states only that he has been "having a terrible time getting mail in or out of DeLeon." This statement simply is insufficient to excuse lapses of six to eight months. Hardin does not claim he did not receive appellee's motion to dismiss or the Clerk's notice regarding the time for filing his appeal brief. Nor does he state that he mailed the statement of issues or appeal brief. Moreover, the Court notes that Hardin's motion to reconsider, which he signed on November 6, 1995, reached the Court and was filed on November 7, 1995, hardly evidence of significant delays in Hardin's mail.

Finding no basis for reconsidering its order of dismissal, the Court ORDERS that Hardin's motion for relief under Rule 60 is DENIED.

Signed this 15th day of November, 1995.

ELDON B. MAHON

UNITED STATES DISTRICT JUDGE